

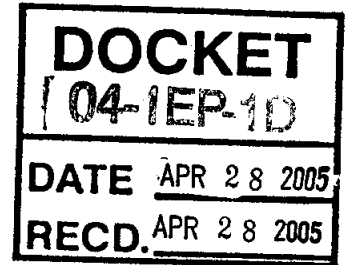
**CALIFORNIA ENERGY COMMISSION**

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



April 28, 2005

Carl W. Boyd  
Strategic Energy LLC  
Two Gateway Center  
Pittsburgh, PA 15222



Dear Mr. Boyd:

Re: Application for Designation of Confidentiality Electricity Supply Forecast Data,  
Docket No. 04-IEP-01

On April 1, 2005, Strategic Energy LLC (Strategic) filed Electricity Resources and Bulk Transmission Data Forms S-1, S-2, and S-3, and supporting work papers in accordance with the Forms and Instructions adopted by the Energy Commission. On April 8, 2005, Strategic filed Electricity Resources and Bulk Transmission Data Form S-5 and supporting work papers for use in the Energy Commission's 2005 Energy Report proceeding. As part of those filings, Strategic is seeking a designation of confidentiality for the above-referenced forms.

Strategic's application for confidentiality (application) states, in part:

Form S-1: Capacity Resource Accounting Table and supporting work papers. Form S-1 contains information on Peak Demand Calculations with associated information on Renewable Contracts, Bilateral Contracts, Short Term and Spot Purchases and Generic Resource needs. This data has not been reported anywhere and this request is that this entire form be held confidential. . . . Applicant requests further that the designation of confidentiality be permanent. Applicant cannot foresee all of the possible ways in which disclosure of information about is (sic) historical and forecasted revenue requirements could cause Applicant competitive harm in the future.

Form S-2: Energy Balance Accounting table and supporting work papers. S-2 contains information on Energy Demand Calculations with associated information on Renewable Contracts, Bilateral Contracts, Short Term and Spot Purchases and Generic Resource needs. This data has not been reported anywhere and this request is that this entire form be held confidential. . . . Applicant requests further that the designation of confidentiality be permanent. Applicant cannot foresee all of the possible ways in which disclosure of information about is (sic) historical and forecasted

revenue requirements could cause Applicant competitive harm in the future.

Form S-3: Generic Renewable Capacity and Energy locations and supporting work papers. Form S-3 contains information on forecasted Renewable Energy and Capacity Locations. This data has not been reported anywhere and this request is that this entire form be held confidential. . . . Applicant requests further that the designation of confidentiality be permanent. Applicant cannot foresee all of the possible ways in which disclosure of information about is (sic) historical and forecasted revenue requirements could cause Applicant competitive harm in the future.

Form S-5: Bilateral Contracts and supporting work papers. Form S-5 contains information on the Applicant's Bilateral Contracts, including information on counter parties, contract products, dependable capacity, availability, and performance requirements. This data has not been reported anywhere and this request is that this entire form be held confidential. . . . Applicant requests further that the designation of confidentiality be permanent. Applicant cannot foresee all of the possible ways in which disclosure of information about its bilateral contract arrangements could cause Applicant harm in the future.

The Public Records Act exempts "trade secrets" from public disclosure, including "any formula, plan, . . . production data, or compilation of information . . ., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service . . . and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." (Govt. Code § 6254.7(d).)

The Commission's regulations provide for information to be designated as confidential if it "contains a trade secret or its disclosure would otherwise cause a loss of a competitive advantage." (20 CCR § 2505(a)(1)(D).)

Forms S-1, S-2, and S-3 and the supporting work papers submitted by Applicant contain trade secrets or otherwise commercially sensitive data. . . . Forms S-5 and the supporting work papers submitted by Applicant contain trade secrets or otherwise commercially sensitive data – bilateral contracts are the foundation of an energy service provider's power supply portfolio. As the

Executive Director correctly observed, this information "could provide significant insight into business strategies in a way that could harm the competitive situation of the filer." For example, the information could be used to determine Applicant's historical and forecasted expenses, revenues, and operating margins. That information in turn could be used by Applicant's competitors to refine their business strategies. It could also be used by suppliers to Applicant's disadvantage in negotiating the terms of procurement transactions. And customers could use the information to extract better terms in contract negotiations with Applicant. These examples are not meant to be exhaustive, but rather illustrate that disclosure of the information in question would cause Applicant a loss of competitive advantage on several levels.

The California Public Records Act allows for non-disclosure of trade secrets (Gov. Code, § 6254(k), Evid. Code, § 1060). The California courts have traditionally used the following definition of trade secret:

"A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it..." (*Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207-208, 96 Cal. Rptr. 493, 500-501, from the Restatement of Torts, vol. 4, sec. 757, comment b, p. 5.)

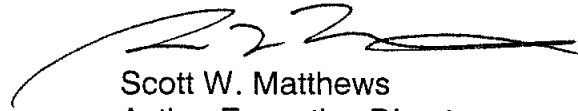
Strategic's 's applications of April 1 and 8, 2005, make reasonable arguments under the Energy Commission's regulation for classifying some of the information contained in your application as confidential, since it could provide your competitors with a competitive advantage if made public. (Gov. Code, § 6254 (k); Cal. Code Regs., tit. 20, § 2505.) However, your application does not provide adequate justification for a permanent designation of confidentiality. Accordingly, confidentiality will be granted as follows:

- Form S-1: Capacity Resource Accounting Table. This Table and supporting work papers have been granted confidentiality for 3 years until the end of 2008.
- Form S-2: Energy Balance Accounting Table. This Table and supporting work papers have been given confidentiality for 3 years until the end of 2008.
- Form S-3: Generic Renewable Capacity and Energy locations. This Table and supporting work papers have been granted confidentiality for 3 years until the end of 2008.

- Form S-5: Bilateral Contracts and supporting work papers have been granted confidentiality until 2016 or the contract end of term, whichever is later. For those contracts which contain clauses specifying that the parties to the contract must maintain confidentiality indefinitely, an argument must be produced, independent of the contract clause, explaining why such information could provide your competitors with a competitive advantage if made public. (Gov. Code § 6254(k); Cal. Code of Regs., tit. 20, § 2505.)

The procedures and criteria for appealing this decision are set forth in the California Code of Regulations, title 20, section 2505. Be advised that an appeal of this decision, to deny your application, must be filed within fourteen days from my decision. If you have any further questions regarding this decision, please contact Thomas Glaviano, Staff Counsel, at (916) 651-8893.

Sincerely,



Scott W. Matthews  
Acting Executive Director

cc: Docket Unit